

S/L 8
24.07.2026
Court. No. 25
suwayan

WPA 18173 of 2026

**M/s Gita Oxygen Company & Anr.
Vs.
State of West Bengal & Ors.**

*Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.
Mr. Sudipta Dasgupta
Mr. Baibhav Roy*

...for the petitioners.

*Mr. Srijib Chakraborty
Mr. Srijit Halder*

...for the respondent nos. 1 to 3.

*Mr. Ashok Prasad
Mr. Priyabrata Das*

...for the respondent nos. 4 & 5.

*Mr. Sakya Sen, Sr. Adv.
Mr. Shiv Ratan Kakrania
Mr. Tanuj Kakrania
Ms. Pallavi Chatterjee
Ms. Jiya Bose
Ms. Surabhi Mehta
Ms. Zainak Hussain*

...for the respondent no. 6.

*Mr. Rishav Banerjee
Ms. Moulinath Moitra*

...for the Ellenbarie Industrial Gases Ltd.

1. The affidavit-of-service filed in Court today is kept with the record.
2. The petitioners have filed the present writ application challenging the rejection of the financial bid of the petitioners. It is the case of the petitioners that the financial bid of the private respondent has accepted by the respondent authorities in spite of the fact that under Zone B the medical oxygen cylinder IP 2022, A type stock must be 400 numbers but as per the documents submitted by the private respondent, the stock of A type oxygen cylinder is only 300 numbers though the

petitioners were having stock of 400 A type cylinder in terms of the tender condition but the tender of the petitioners is rejected.

3. The petitioners have draws the attention of this Court with regard to the eligibility criteria for participating in the said tender. As per Clause 2 the bidder should have the capability to supply all the three gases – medical oxygen, medical nitrous oxide and carbon dioxide in the zone for which the bid is made. Clause 4 provides that the bidders should have minimum stock of 4000 B type and 4000 D type cylinders inventory with him and all cylinders should be approved by PESO for handling medical oxygen.
4. Learned counsel for the petitioners draws attention of this Court to Clause 5 Table A1 wherein as per Zone B the stock of A type cylinder must be 400 numbers. The petitioners have relied upon the declaration submitted by the private respondent wherein the stock possession of the A type cylinder of the private respondent is only 300 numbers not the 400 numbers as prescribed under Zone B in Clause 5 Table A1.
5. Mr. Bhattacharyya, learned Senior Advocate appearing for the petitioners submits that the respondents without considering that the petitioners were having the stock of 400 numbers of A type cylinder but ignoring the capability of the petitioners have accepted the tender of the private respondent though the private respondent has not fulfill the eligibility criteria as the private respondent was not having the stock of 400 numbers of A type cylinder. He submits that though the financial bid has

also been opened but work order has not been issued and prayed for directing the respondent authorities to consider the tender of the petitioners as the petitioners are having the 400 numbers of A type cylinder and the private respondent is not having the A type cylinder and with regard to Zone B and the petitioners have participated in Zone B category.

6. Learned counsel appearing for the respondent authorities submits that the private respondent has participated in all Zones. He submits that on March 5, 2026 the tender was floated, May 27, 2026 first notice of shortfall was given to all the participated bidders. Second notice of shortfall was issued to the bidders on June 9, 2026. The petitioners have lodged the complaint on June 8, 2026 and the technical bid was opened on July 16, 2026. On July 16, 2026 the petitioners had the knowledge with regard to allowing the technical bid of the private respondent though the private respondent was not having the stock of 400 A type cylinders but the petitioners have not raised any objection or file any writ application. The petitioners have waited till the financial bid was opened and when the financial bid is opened and found that the petitioners are not selected and the private respondent was the L1, the petitioners have filed the present writ application and such the writ application is to be dismissed.
7. He further submits that as per Clause 5 Table A1 the bidder should supply the 100 per cent cylinder and only to have the stock in emergency situation and thus the authorities have considered that though the private

respondent has qualified with regard to all eligibility criteria only with regard to the shortage of 100 cylinders, the respondents have relaxed and technical bid of private respondent was allowed and after opening of the financial bid it was found that the private respondent is the L1 and the petitioners are L2.

8. Learned counsel for the State has relied upon the judgment in the case of ***Agmatel India Private Limited vs. Resoursys Telecom and Ors.*** reported in ***(2022) 5 SCC 362*** and submits that the Hon'ble Supreme Court has categorically held that the technical evaluation of comparison by the Court is impermissible under the writ jurisdiction. He further relied upon the judgment in the case of ***N. G. Projects Ltd. Vs. Vinod Kumar Jain & Ors.*** reported in ***(2022) 6 SCC 127*** and submits that the Court does not have the expertise to examine the terms and conditions of the present day of economic activities of the State and this limitation should be kept in view. The Courts should be even more reluctant in interfering with contracts involving technical issues as there is a requirement of the necessary expertise to adjudicate upon such issues.
9. Mr. Sen, learned Senior Advocate appearing for the private respondent submits that the private respondent has submitted all required documents as prescribed under the technical bid. After considering the documents submitted by the private respondent, the respondent authorities have accepted the technical of the private respondent. The petitioners had the knowledge before the technical bid was accepted that the private

respondent has submitted the certificate having only 300 stock A type cylinder but the petitioners have not raised any objection and have waited till the opening of the financial bid, when the financial bid was opened and the petitioners came to know that he was the L2 and the private respondent was the L1 has filed the present writ application.

10. He further submits that as per Clause 5 Table A1 the authorities have found that the private respondent is able to supply of 100 per cent cylinder and having stock of 300 A type cylinder thus the authorities have relaxed with regard to the 100 numbers of the cylinder and accepted the technical bid. He further submits that with regard to the license, other documents, the private respondent has submitted all the documents and the respondent authorities have satisfied with the documents submitted by the private respondent.
11. Mr. Sen, learned Senior Advocate relied upon the judgment in the case of ***Tata Motors Limited vs. Brihan Mumbai Electric Supply and Transport Undertaking (Best) & Ors.*** reported in **(2023) 19 SCC 1** and submits that the Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or *mala fides* or bias or irrationality is made out. The private respondent has further relied upon the judgment in the case of ***Jal Mahal Resorts Private Limited vs. K.P. Sharma & Ors.*** reported in **(2014) 8 SCC 804** and submits that minor technical irregularity and deviation from non-essential or ancillary/subsidiary requirement can be waived and the Government would

justified in waiving technical compliance with a tender condition. He further relied upon the judgment passed by the co-ordinate Bench of this Court in **WPA 7987 of 2024** in the case of **Siboram Bhatta vs. State of West Bengal & Ors.** dated April 18, 2024 and submits that in the similar situation the co-ordinate Bench of this Court has dismissed the writ application.

12. Heard the learned counsel for the respective parties perused the materials on record and the judgments relied by the parties.
13. Clause 5 Table A1 Zone B provides that the bidder should possess B type cylinder of 1500 numbers, A type cylinder of 400 numbers and D type cylinder of 1000 numbers. The private respondent has submitted declaration wherein it is certified that the stock of A type cylinder is 300 numbers. The said fact is also admitted by the respondent authorities that the private respondent is not having the stock of 400 A type cylinder as provided under Zone B Clause 5 Table A1. The contention raised by the respondent authorities is that on June 13, 2026 a meeting of Tender Evaluation Committee was held. In the said meeting, the Tender Evaluation Committee have considered the documents submitted by all seven bidders and after considering the documents it was found that the petitioners and the private respondent are fulfilled the criteria for the technical bid. Accordingly, the technical bid was opened.
14. As per the contention of the respondent authorities that the private respondent is able to supply the 100 per cent cylinder to the Government and he possessed stock of

300 numbers of A type cylinder. The stock is required in emergency situation and as such the respondent authorities have relaxed the condition of the private respondent with regard to the 100 numbers of the A type cylinder and allowed to participate in the technical bid.

15. This Court finds that once the authorities have decided that the bidders should possess the specific quantity of the A type cylinder and that has been published in the tender notice and there is no condition in the tender notice that the authorities will also consider with that if the bidder is having the less quantity of the stock instead of the stock mentioned in tender document. The resolution submitted by the State authorities dated June 30, 2026 also does not record under which situation the authorities have relaxed the condition knowing that the private respondent is not having the stock 400 A type cylinder. They have only taken the decision with regard to the documents submitted by the parties. There is no decision with regard to the relaxation of eligibility criteria by accepting the stock of 300 A type cylinder instead of 400 stocks.

16. In the case of ***Agmatel India Private Limited (supra)*** the Hon'ble Supreme Court held that the author of the tender document is taken to be the best person to understand and appreciate its requirements. In the present case the authorities after taking into consideration have decided that the stock must be minimum 400 and the tender document was published but at the time of accepting the tender the respondent authorities have accepted the tender of private

respondent knowing that the private respondent is not having the stock of 400 numbers of A type cylinder and have also not recorded the reasons for relaxation of the said condition.

17. In the case of ***N. G. Projects Limited (supra)*** the Hon'ble Supreme Court has held that the writ court should refrain itself from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tenderer. In this case, the specific case made out by the petitioners that the respondent authorities by violating the eligibility criteria of the terms of the bid documents have accepted the technical bid of the private respondent with regard to Zone B. As the private respondent was not having the stock of 400 numbers of A type cylinder.
18. In the case of ***Tata Motors Limited (supra)*** the Hon'ble Supreme Court held that the Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness of *mala fides* or bias or irrationality is made out. In the present case this Court finds that in the tender documents specific conditions have been laid down that the bidder should possess 400 numbers of A type cylinder but admittedly the private respondent was not having the 400 numbers of A type cylinder and in the resolution dated June 30, 2026 the authorities are not taken any resolution that condition was relaxed but the respondent authorities have accepted the tender of the private respondent with regard to Zone B without considering that the petitioners fulfils the said conditions.

19. In the case of ***Jal Mahal Resorts Private Limited (supra)*** the Hon'ble Supreme Court held that as a matter as a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, it is not entitled to waive even a technical irregularity of little or no significance. The tender is with regard to supply of oxygen cylinder. It is the specific condition of the authorities that the bidders should possess a requisite number of A type cylinder in stock that in emergency situation there should not be any shortage of cylinder. But in the present case, the quantity of stock of 400 numbers is fixed but the private respondent is not having the quantity of the stock of 400 numbers of A type cylinder. In spite of the same, the authorities have accepted the same.
20. In the case of ***Siboram Bhatta (supra)*** this Court finds that the said judgment is not applicable in the present case as in the said case the petitioners were ineligible to participate in the tender but in the present case, the petitioner was eligible and his technical bid was accepted. He is having the total stock with regard to the numbers of the cylinders but ignoring the stock of the petitioners, the respondent authorities have accepted the tender of the private respondent though the private respondent is not having the stock of 400 A type cylinder.
21. As regard not raising any objection or filing writ petition after technical bid of the private respondent is accepted, this Court finds that technical bid was opened on July 16, 2026, that is on Thursday and immediately on Monday

that is on July 20, 2026 financial bid was open, thus the petitioners have filed the present writ application on July 23, 2026. Considering the above, this Court did not find any merit on the submission of the respondents.

22. Considering the above, this Court finds that the respondent authorities arbitrary and whimsical by ignoring the stock of the petitioners that the petitioners are having the stock of 400 A type cylinder and the private respondent is not having the stock of 400 numbers of A type cylinder but have accepted the tender of the private respondent. Accordingly, with regard to Zone B of the tender by accepting the technical bid of the private respondent is set aside and quashed. It is informed by the parties that till date the work order have not been issued. Accordingly, the respondent authorities are directed to consider the technical and the financial bid of the petitioners with regard to the Zone B and to pass appropriate order. This Court has not considered with respect of other Zone.
23. WPA 18173 of 2026 is disposed of.
24. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Krishna Rao, J.)